

# Licences and Traffic Offences



University of  
South Australia

Legal Advice  
Clinic



## Welcome to the University of South Australia Legal Advice Clinic

The Legal Advice Clinic at the University of South Australia provides confidential, free legal advice.

The Clinic is staffed by law students who offer legal advice to clients under the supervision of a managing solicitor. Students are trained in professional conduct and all enquiries are treated as confidential.

The Clinic is based on the University of South Australia City West campus, offering an appointment service from Monday to Thursday. On Tuesdays it operates an outreach at the Elizabeth Magistrates Court during the Investigation and Summons Hearings. On Fridays it offers a drop-in service at the Port Adelaide Magistrates Court.

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## Licences and Traffic Offences

*This booklet outlines the procedure and other relevant information regarding licences and what happens if you are charged with having committed a traffic offence.*

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## What do I need to know about holding a driver's licence?

All people who drive in Australia must have a valid driver's licence. It is important that you are properly licensed and know the conditions of your licence before you start driving. Driving without a proper licence or breaching the conditions of your licence can have serious consequences. You could be fined, disqualified from holding a driver's licence, or even imprisoned.

If you are a resident of South Australia and drive, you must have a South Australian driver's licence. There are different types of South Australian driver's licences with varying conditions.

One important condition is that the driver must only acquire a limited number of

demerit points. If you commit a traffic offence, it is likely that it will attract demerit points. If you acquire too many demerit points, you lose your licence.

All licence holders start with no demerit points. If a traffic offence is committed, and demerit points apply, the driver incurs these points. Demerit points remain on your driver's licence record for a period of three years from the date of the offence.

The *Motor Vehicle Regulations 2010* provides a list of offences and the demerit points that apply. Some examples of offences that attract demerit points are listed below. This is not a complete list:-

| Offence   | Demerit Points |
|---|----------------|
| Failing to stop at red traffic light or arrow               | 3              |
| Failing to wear seatbelt                                    | 3              |
| Failing to stop at yellow traffic light or arrow            | 3              |
| Driving with prescribed concentration of alcohol in blood:- |                |
| Less than 0.08mg  | 4              |
| More than 0.08 but less than 0.15mg                         | 5              |
| More than 0.15mg  | 6              |

| Offence                                  | Demerit Points |
|--|----------------|
| Speeding:-                               |                |
| Less than 10kph                          | 2              |
| More than 10 but less than 20kph         | 3              |
| More than 20 but less than 30kph         | 5              |
| More than 30kph                          | 7              |
| Driving without due care or attention    | 3              |
| Failing to indicate when turning         | 2              |
| Using mobile phone while driving vehicle | 3              |
| Overtaking when unsafe to do so          | 2              |





### ***Fully Licensed Drivers***

If you are a fully licensed driver, you must not incur 12 or more demerit points within a 3 year period. If you incur 12 or more demerit points in this timeframe, Transport SA will send you a notice of licence disqualification.

If you receive a disqualification letter, you may be provided with an opportunity to go on the 'Good Behaviour Option' for 12 months. This option means you can continue to drive. Electing to go on the Good Behaviour Option must be made within 21 days of the disqualification notice issue date. The disqualification letter explains how you can choose this option.

However, if 2 or more demerit points are incurred during the 12 month good behaviour period, you will lose your licence for a period twice as long as the original disqualification period.

### ***Learner's Permit Drivers***

If you hold a learner's permit you are not allowed to incur 4 or more demerit points. If you do, you will be issued with a notice of disqualification. The Good Behaviour Option is not available.

There are some offences that will result in automatic disqualification for learner's permit drivers:

- Driving under the influence of alcohol or drugs
- Exceeding any speed limit by 10kph
- Failing to drive with a qualified supervising driver

The following offences may result in automatic disqualification:

- Failing to display 'L' plates
- Failing to carry licence while driving
- Exceeding 100kph
- Using a mobile phone function including hands free or loudspeaker.

### **Provisional Licence Holders (P1 and P2)**

If you are on a P1 or P2 licence, you are not allowed to incur 4 or more demerit points against your name. If you do, you will be issued with a notice of disqualification. The Good Behaviour Option is not available to P1 or P2 licence holders.

The following offences will result in automatic licence disqualification for P1 and P2 licence holders:

- Driving under the influence of any drugs or alcohol
- Exceeding any speed limit by 10kph

There are also offences which could result in automatic disqualification for P licence holders:

- Failing to carry licence when driving
- Exceeding 100kph
- Driving a high powered vehicle

### **Provisional 1 Licence Holders (P1)**

The following offences only apply to P1 licence holders. These offences could result in licence disqualification:

- Failing to display 'P' plates correctly
- Using a mobile phone function including hands free and loudspeaker.
- Driving between midnight and 5am\*

- Driving with more than one passenger aged 16-20 years\*

\*This only applies if you are under 25 years and do not meet exemption criteria or otherwise do not have a qualified supervising driver seated next to you. The most common exemption is the need to drive after midnight for your job.

### **Safer Driver Agreement**

If you have a P2 licence and are issued with a disqualification notice, you may choose the Safer Driver Agreement. This is similar to a Good Behaviour Option in that it allows you to continue driving.

Under the Safer Driver Agreement you will be issued a new provisional licence for a further 2 years. If you breach your new provisional licence conditions or you exceed 4 demerit points again:-

- you will be disqualified for 12 months;
- you cannot appeal against the disqualification; and
- you cannot apply for another Safer Driver Agreement for the next five years.

### **Appealing your Licence Disqualification**

If you are the holder of a provisional or probationary licence and you are not entitled to elect to enter a Safer Driver

Agreement, you may be able to appeal your licence disqualification in your local Magistrates Court.

To successfully appeal you must prove that disqualification will result in severe and unusual hardship to yourself, or your dependants. Severe and unusual hardship must be more than inconvenience. You must show a complete reliance on your licence to earn a living, travel to work, etc. You must also be able to show through your driving history that you are not a safety risk to yourself or the public.

If you have appealed a licence disqualification, or have been disqualified while on a Safer Driver Agreement, within the past 5 years, you will not be entitled to appeal your disqualification.

### **I've received an expiation notice for a traffic offence – what should I do?**

If the police believe you have committed a traffic offence, they may issue you with an expiation notice.

An expiation notice provides you with details of the offence that the police say you committed, and the fine you are required to pay.

The traffic offence specified in the expiation notice may also result in you receiving demerit points on your licence.

Once you have been issued with an expiation notice, you can:-

- Pay the fine within 28 days - if you pay an Expiation Notice before the due date, you will not receive a conviction for that offence. Failure to pay before the due date will result in late fees.
- Apply for a review to the Manager of the Expiation Notices Branch. You can make this application if the offence is trivial or issued to you by mistake. Additionally, an application may be advisable if you could not reasonably avoid the offence, or when there are compelling safety reasons that explain your actions (*further information about making an application is explained on page 7*).
- Elect to be prosecuted and have the matter heard in court. You should, of course, get legal advice before making this decision. If a court finds you guilty, the penalty may be harsher and you may get a conviction on your police record (*convictions are explained on page 9*).
- If you were not driving the vehicle at the time the offence was committed and you know the identity of the driver who committed the offence, you can complete a Statutory Declaration so that the expiation notice can be reissued against the offending driver. The Statutory Declaration form can be obtained from any Magistrates Court or online at the South Australia Police website.

**I have committed the offence and want to pay the fine, but I can't afford to before the due date – what should I do?**

If you cannot afford to pay the fine specified in the expiation notice in full by the due date, you can apply to enter into a payment arrangement at any time before the due date. Visit [www.fines.sa.gov.au](http://www.fines.sa.gov.au) for further information on how to enter into a payment arrangement.

**I don't think I should have received the expiation notice – what should I do?**

If you receive an expiation notice, and think that it is wrong or that you did not commit the offence, you can either:-

- Apply for a Review to the Manager of the Expiation Notices Branch (depending on the circumstances); or
- Elect to be prosecuted and argue the matter in Court.

***Applying for a Review***

You can apply for a review online by filling out the form which can be found at the Services and Events section of the Police website: [www.police.sa.gov.au/](http://www.police.sa.gov.au/).

Alternatively, your request can be made in writing. You then mail your application and supporting documentation to the Manager of the Expiation Notice Branch.

You can request a review when:

- The Notice is incorrect or a mistake has

been made.

- The offence which gave rise to the notice is trifling.
- You have additional information that may warrant a caution or withdrawal of the Notice.
- Other exceptional circumstances.

After you submit a review form, the Expiation Notices Branch will either withdraw the Notice or inform you that the Notice will stand. If the Notice is not withdrawn then your only options are to pay the fine or elect to be prosecuted.

***Electing to be Prosecuted***

You should always seek legal advice before electing to be prosecuted. To elect to be prosecuted, you must complete the form on the back of the Expiation Notice and send it to the Expiation Notices Branch.

If you elect to be prosecuted, you will be issued with a Summons and you must attend Court. You will deal with a Police Prosecutor before a Magistrate to resolve your matter.

If you elect to be prosecuted, you risk being convicted of the offence. This means the offence will appear on your Police Record.

*Please see page 9 for further discussion on convictions.*





**I committed the offence specified on the Expiation Notice but I don't think I should get demerit points. What should I do?**

You can elect to be prosecuted and then apply to the court to have the number of demerit points you incur for that offence reduced, or obtain an order that no demerit points be incurred. This is called a "Demerit Point Application."

As mentioned previously, you should always seek legal advice before you elect to be prosecuted and go to court. Not everybody has a case for a successful Demerit Point Application.

Situations where a Demerit Point Application has a reasonable chance of success in court are limited.

The *Motor Vehicles Act 1959* states that in order to be successful in making an application for an order of 'no demerit points' or 'reduced demerit points,' the

Court has to be satisfied that the offence is either:-

- trifling; or
- a proper cause exists.

#### ***When is an offence trifling?***

For an offence to be considered trifling, you must convince a Magistrate that:-

- there were compelling humanitarian or safety reasons for your conduct; or
- you could not, in all the circumstances, reasonably have avoided committing the offence; or
- the offence was trivial, technical, or a petty instance of a breach of law.

#### ***When does a proper cause exist?***

Convincing a magistrate that a proper cause exists is not straightforward. The fact that you or your dependants will suffer hardship from the loss of your licence is not of itself sufficient for a Court to award a reduction in demerit points.

Ultimately, you need to convince the Magistrate that the situation of your offence was exceptional and that the circumstances of your offending do not justify the recording of demerit points.

Examples of situations that might be sufficient to argue proper cause follow:-

- Where the offence committed was speeding and it was only a momentary acceleration for a very brief and transient period to overtake due to safety concerns.
- Where the circumstances of the offence are such where it is not entirely your fault (e.g. a collision has occurred, you have been issued with an expiation notice for driving without due care, but the other driver is also to blame for the collision).
- Where a faulty speedometer has registered a speed significantly lower than the correct speed of the offence committed.
- Where the offence of speeding was committed to clear slow-moving vehicles ahead.

### **What is a conviction?**

A conviction is a formal finding of a court that you are guilty of having committed an offence.

If a conviction is recorded against your name, this means the offence and

conviction will appear on your police record, which may have a detrimental impact on your future.

### **How can I seek an order without conviction?**

You can seek an order that no conviction be recorded when you appear before the Magistrate for your offence.

To be successful, you need to convince a Magistrate that you are unlikely to commit the offence again. Additionally, you need to show the Magistrate that there is a good reason for not recording a conviction when regard is had to:

- your character, prior offending, age or physical or mental condition;
- whether the offence was trifling; or
- any other extenuating circumstances,

Further information about this topic can be found in our *Pleading Guilty* brochure.



## Free Legal Services

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The following is a list of free legal services available in South Australia:

*University of South Australia Legal Advice Clinic*

t +61 8 8302 7436

f +61 8 8302 7110

lawclinic@unisa.edu.au

unisa.edu.au/law/clinic

facebook.com/UniSALegalAdviceClinic

*South Australian Council of Community Legal Centres*

t +61 8 8342 1800

f +61 8 8342 0899

www.saccls.org.au

*Legal Services Commission of South Australia*

Telephone Advice:

Monday to Friday 9am-4.30pm

t +61 8 8463 3555

www.lsc.sa.gov.au

*Child Support Help Line*

t +61 8 8463 3576

*Legal Help Line (Country callers)*

t +1300 366 424

*Duty Solicitor*

Duty solicitors can be found at each of the metropolitan magistrates courts in South Australia and offer a drop-in service.

To speak to a financial counsellor contact:  
*The South Australia Financial Counsellors Association*

t +1800 007 007

financialcounselling@safca.info

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### **Disclaimer**

This material contains general information only. It does not contain legal advice and you should not rely on the general information for advice about any specific legal problem. You should see a lawyer for specific advice about your legal problem.

Care has been taken to ensure that the information contained in this material is correct at the time of publication, but no responsibility will be accepted for any errors or omissions.

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